

PETER K. WALSTROM

IBLA 82-694

Decided August 17, 1982

Appeal from requirement by the Montana State Office, Bureau of Land Management, increasing rental rate for the sixth and each succeeding year for oil and gas lease M 52710.

Affirmed.

1. Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased a rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease applications were drawn with first priority before the regulation became effective.

APPEARANCES: Peter K. Walstrom, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Peter K. Walstrom filed a simultaneous oil and gas lease application for parcel No. MT 133 in the July 1981 drawing. His card was drawn first for this parcel. While his application was pending, the Department amended 43 CFR 3103.3-2 which provides in pertinent part: "(f) An annual rental of \$1 per acre or fraction thereof for each of the first 5 years and \$3 per acre or fraction thereof thereafter shall be paid on all leases issued under Subpart 3112 of this title after the effective date of this rulemaking." 47 FR 2864 (Jan. 20, 1982). This regulation became effective February 19, 1982. On March 25, 1982, the State Office notified appellant that his offer had obtained priority in the simultaneous drawing, and that his application could be considered as an offer if the first year's rental payment was submitted with signed copies of the lease forms within 30 days. The lease forms indicated the increase in rental to \$3 per acre or fraction thereof for the sixth

and each succeeding year. On April 2, 1982, appellant filed a "protest-appeal" stating that the application for this lease was signed in early 1981 with the understanding that annual rentals would be \$1 per acre for the 10-year lease term.

[1] By its terms, the above-quoted regulation applies to all leases issued after its effective date, regardless whether a lease offer application was pending or not. Five years ago, the Department increased the lease rental from 50 cents to \$1. 42 FR 1032 (Jan. 18, 1977). A number of applicants who had filed their offers prior to the time the regulation became effective complained that they should get leases at the old rates. We held that where the Department, through a duly promulgated regulation, has increased the rental rates on all noncompetitive oil and gas leases issued after a specified date, such increase rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date. Raymond N. Joeckel, 29 IBLA 170 (1977). The mere filing of an oil and gas lease application vests no property right in an applicant which would exempt his application from the amended regulation. Id.; see Udall v. Tallman, 380 U.S. 1, 4 (1965); McDade v. Morton, 553 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, we affirm the notice sent by the Montana State Office, Bureau of Land Management, requiring execution of a lease form with the rental stated therein.

Edward W. Stuebing
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING:

I do concur. I only wish to add some excerpts from the supplementary information that accompanied the promulgation of the proposed and final amendment of the rule as at least a partial indication of why it turned out the way it did:

The proposed rulemaking amending the regulations on the * * * rental for simultaneous oil and gas leases was published in the Federal Register on October 29, 1981 (46 FR 53645) * * *. A total of 1854 comments were received on the proposed rulemaking, with a vast majority of the comments coming from individuals. * * * The comments on the rental increase showed 486 favoring the increase with 785 opposing it. A careful review of the comments showed that there were no substantive views presented on the increases in the filing fee or rentals. * * * In view of the fact that the Department of the Interior has received no compelling argument for not instituting the proposed increases in the filing fee and rental, the final rulemaking restates the provisions of the proposed rulemaking without change.

47 FR 2864 (Jan. 20, 1982).

Compelling arguments concerning the rental fee would presumably have had to address the rationale set forth for increasing it when the proposed rulemaking was published:

This proposal also increase [sic] the rental fee for simultaneous oil and gas leases issued after the effective date of the rulemaking. This is based on the belief that the increase in the rental fee will encourage more timely exploration for oil and gas and discourage the holding of large inventories of Federal lands for long periods of time. [1/]

46 FR 53645 (Oct. 29, 1981).

Also accompanying the publication of the proposed rule was the following statement:

The Department of the Interior has determined that this document is a major rule under Executive Order 12291. The

1/ Comments received on the rental fee increase were to be incorporated into a study which the Secretary of the Interior was to report to the Congress in accordance with the Omnibus Budget Reconciliation Act of 1981. "This study will address the feasibility and effect of raising noncompetitive rental fees." 46 FR 53645 (Oct. 29, 1981). A draft of this study is currently being reviewed within the Department.

Department has requested the Director, Office of Management and Budget, to exercise his authority, as provided in section 8 of E.O. 12291, to exempt this rule from the provisions of section 3 of E.O. 12291 which requires the preparation of preliminary and final regulatory impact analyses of major rules. This proposed regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Reform Act (Pub. L. 96-354).

With the final rule the following information was provided: "The final regulatory impact analysis, including an analysis of the public comments, on this rulemaking has been prepared and copies are available to the public at the following address: Director (530), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240." 47 FR 2864 (Jan. 20, 1982).

Will A. Irwin
Administrative Judge

